

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
RODNEY TATE, )  
Defendant. )  
No. 4:16CR560 RLW

**MEMORANDUM AND ORDER**

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge David D. Noce (ECF No. 55). Defendant Tate filed a Motion to Dismiss Indictment on March 23, 2017 (ECF No. 45), and the Government filed a Response in opposition to Defendant's motion (ECF No. 52). On April 20, 2017, Magistrate Judge Noce held a hearing on the motion to dismiss.

Pursuant to 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Noce, who filed a Report and Recommendation on April 27, 2017 (ECF No. 55). Defendant Tate filed an objection to the Report and Recommendation on May 12, 2017 (ECF No. 54),<sup>1</sup> and the Government filed its response the following day (ECF No. 57). Defendant Tate objects to Magistrate Judge Noce’s finding that Defendant’s alleged false statements do not fall within the judicial function exception in 18 U.S.C. § 1001(b) but are prosecutable under § 1001(a). Defendant Tate argues that the indictment should be dismissed under 18 U.S.C. §

<sup>1</sup> The Court notes that Defendant filed his objection one day past the deadline for filing written objections. While the Court will consider the objection, defense counsel is advised that a motion for leave to file out of time, with reasons in support, should have accompanied the objection.

1001(b), which makes an exception for false statements made in connection with judicial proceedings. The Court finds that Defendant Tate's objections are not persuasive.

Magistrate Judge Noce recommends that Defendant's Motion to Dismiss Indictment (ECF No. 45) be denied. After *de novo* review of this matter, the Court adopts the Magistrate Judge's recommendation.

Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation of United States Magistrate Judge David D. Noce (ECF No. 55) is **SUSTAINED, ADOPTED, AND INCORPORATED** herein.

**IT IS FURTHER ORDERED** that Defendant Tate's Motion to Dismiss Indictment (ECF No. 45) is **DENIED**.

Dated this 17th day of May, 2017.



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RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE